IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16847 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHRATHBHAI KHALAPBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16847 of 2003

MR PARESH UPADHYAY for Petitioner No. 1-3

Mr. Pancholi, AGP for Respondent No. 1-4

NOTICE SERVED for Respondent No. 1,5-4

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 18/03/2004

ORAL JUDGEMENT

1. Rule. Learned Assistant Government Pleader, Mr. Pancholi, waives service of notice of Rule on behalf of

the respondents.

2. The petitioners are working as Assistant Teachers in Ashram Shalas for many years and possess requisite qualification for being appointed as Assistant Teachers. The petitioners and/or similarly situated persons had earlier preferred Special Civil Applications Nos.13200 of 2000 to 13233 of 2000 and Special Civil Application No.2506 of 2001 which were disposed of by Oral Order dated 26th December 2000 by the Court (Coram: H.K. Rathod, J.) and by Oral Judgment dated 12th July 2001 by the Court (Coram: P.B. Majmudar, J.), respectively. Again, Special Civil Applications Nos. 5378 of 2001 and 9313 of 2001 were preferred by similarly situated persons and the question regarding grant of lien to the teachers was, again, agitated before this Court. At that time, this Court (Coram: Jayant Patel, J.), by Oral Judgment dated 1st February 2003 quashed and set aside the impugned order and directed the respondents-Authorities to take a decision afresh on a representation directed to be made by the petitioners therein after taking into consideration judgments rendered in earlier petitions, Special Civil Applications Nos.13200 of 2000 to 13233 of 2000 and Special Civil Application No.2506 of 2001. Following the direction, the order at Annexure "A" impugned herein came to be passed on 10th October 2003.

3. This Court has given a close scrutiny to the order impugned herein and it is apparent and conspicuous that the Authority, while passing the order, has not given any consideration, leave aside due consideration, to the directions of this Court given in Special Civil Applications Nos. 5378 of 2001 and 9313 of 2001, and has not considered the judgements and the interpretation made of the Government Resolution in question in those orders in Special Civil Applications Nos.13200 of 2000 to 13233 of 2000 and Special Civil Application No.2506 of 2001. The learned Assistant Government Pleader is also not in a position to defend the impugned order (Annexure "A").

4 A look at the order passed by this Court in Special Civil Application No.2506 of 2001, more particularly, paragraph 6, makes it clear that the Resolution dated 8th December 1999 was brought to the notice of this Court and, thereafter, interpretation was made by this Court.

5. Be that as it may, this Court at this stage would not like to go into the details thereof. The impugned order (Annexure "A") is set aside mainly on the ground that it is passed de hors the directions of this Court,

without considering the interpretation of the Government Resolution in question made by this Court in the earlier orders referred to hereinabove, and no reasons are given therefor.

6. Under the circumstances, the petition is allowed by quashing and setting aside the impugned order (Annexure "A").

7. The Secretary, Education Department, is directed to follow the directions of this Court (Coram: Jayant Patel, J.) by order dated 1st February 2003 rendered in Special Civil Applications Nos. 5378 of 2001 and 9313 of 2001 and pass appropriate orders as early as possible preferably within eight weeks from the date of receipt of this order.

8. Rule is made absolutely accordingly with no order as to costs .

9. Direct service is permitted.

(A.L. Dave, J.)

(swamy)